

REMARKS

This Amendment is filed in response to the Office Action mailed on December 11, 2006. All objections and rejections are respectfully traversed.

Claims 1, 3-8, 10-22 are currently pending.

Claims 17 and 20 are hereby cancelled without prejudice.

Claims 14 – 16 are currently amended to correct a clerical error and place the claims in better form for allowance.

Petition to Remove Finality

Applicant respectfully petitions that the finality of the Office Action mailed on December 11, 2006 be removed because the Examiner cited new art which was not necessitated by Applicant's amendments. Rather the amendments in Applicant's response to the Office Action dated March 24, 2006 are not the subject of the new art. Further, the Applicant's new claims 24-28 which may have necessitated a new search, were cancelled by Applicant's response to a restriction requirement in the Office Action dated September 6, 2006.

Rejections under 35 U.S.C. §102

The Examiner rejected claims 1, 3-8, 10 and 13-16 under 35 U.S.C. 102(e) as being anticipated by U.S. Patent No. 6,275,931 to Narayanaswamy et al. (hereinafter "Narayanaswamy"). Claim 1, representative in part of the other rejected claims sets forth:

1. A **removable nonvolatile memory device** for use in a storage system having an operating system kernel, comprising:

a plurality of partitions, **each of the plurality of partitions capable of storing differentiated information;**

a first kernel image, the first kernel image stored in a first partition of the plurality of partitions wherein the first kernel image is an upgrade kernel; and

a second kernel image, the second kernel image stored in a second partition of the plurality of partitions, wherein the second kernel image is a last known good kernel.

In paragraph 3 of the Office Action, the Examiner erroneously indicated that “Narayanawamy teaches a removable nonvolatile memory device [*flash memory 20 of Fig. 2*].” Applicant respectfully submits that Narayanawamy does not teach or suggest a **removable memory device** of any sort. Rather, the memory 20 of Narayanawamy is internal to the terminal 10 which is the device being updated. Narayanawamy recites that the terminal 10 is a “handheld terminal that is used by technicians in the process industries for process control systems configuration monitoring tuning and diagnostics. The handheld terminal has firmware therein stored in the programmable memory. The firmware includes the boot code and the main code.” (Col. 1 lines 12-18).

The terminal includes a keypad...display... internal memory ... and a microprocessor (col.4, lines 44-60). “Internal to the terminal 10 is a programmable memory 20...” (Col. 4, line 58). Accordingly, Applicant submits that the terminal that is the subject of Narayanawamy is a self contained microprocessor system and the memory 20 is internal to the terminal. (See Fig. 2)

Further, Applicant respectfully submits that Narayanaswamy alone or in combination with any other references does not teach or suggest anything analogous to the present invention because the internal memory 20 is not upgraded by inserting any removable device. Rather, the internal memory 20 is upgraded by connecting the terminal to a personal computer (PC) via a cable (RS232).

Since Narayanaswamy does not teach or suggest each and every element of the independent claims, Applicant respectfully submits that the rejections under 35 U.S.C. 102(e) are improper and must be withdrawn.

The Examiner rejected claims 17-22 under 35 U.S.C. 102(b) as being anticipated by U.S. Patent No. 5,568,641 to Nelson et al. (hereinafter "Nelson"). Claims 17 and 20 are cancelled. Claim 18, representative in part of the other rejected claims sets forth:

18. A method for installing an upgrade kernel in a computer system having a **removable nonvolatile memory device, the removable nonvolatile memory device having at least a first partition and a second partition, the computer system currently executing a copy of an old kernel stored in the first partition of the removable nonvolatile memory device**, the method comprising the steps of:

determining if the computer system booted from the old kernel, and if so, copying the old kernel from the first partition to make a copy of the old kernel to place in the second partition;

adjusting a set of boot variables so that the computer will boot from the second partition;

copying a stored copy of the upgrade kernel to the first partition; and

adjusting the set of boot variables so that the computer will boot from the first partition.

In paragraph 13 of the Office Action, the Examiner erroneously indicated that “Nelson teaches a method for installing an upgrade kernel in a computer system having a removable nonvolatile memory device...” Applicant respectfully submits that Nelson does not teach or suggest a **removable memory device** of any sort. Rather, Nelson discloses internal flash memory (EEPROM) that can be upgraded by downloading code to the EEPROM. (See col. 1, lines 26-45).

Further, Applicant respectfully submits that Nelson alone or in combination with any other references does not teach or suggest anything analogous to the present invention because the EEPROM of Nelson is not removable and is not upgraded by inserting any removable device. Rather, the EEPROM of Nelson is internal and is upgraded by downloading code to the EEPROM. (See col. 1, lines 39 – 40).

Since Nelson does not teach or suggest each and every element of the independent claims, Applicant respectfully submits that the rejections under 35 U.S.C. 102(b) are improper and must be withdrawn.

All independent claims are believed to be in condition for allowance.

All dependent claims are believed to be dependent from allowable independent claims, and therefore in condition for allowance.

Favorable action is respectfully solicited.

Should the Examiner feel personal contact is required to discuss this matter further, please do not hesitate to call the undersigned attorney at (617) 951-2500.

Please charge any additional fee occasioned by this paper to our Deposit Account
No. 03-1237.

Respectfully submitted,

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